

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,

Defendant.

Civil Action No. 41-1395 (WCC)

~~PROPOSED~~ AGREED
INTERIM FEE ORDER

In the matter of the Application for the
Determination of Reasonable License Fees for
Performances via Wireless and Internet
Transmissions by

MOBITV INC. f/k/a IDETIC, INC.

MobiTV Inc. f/k/a Idetic, Inc. ("MobiTV") having applied to the American Society of Composers, Authors and Publishers ("ASCAP") for a license for the right to perform publicly the musical compositions in ASCAP's repertory via Wireless and Internet Transmissions by MobiTV ("the MobiTV Service") pursuant to Section IX(A) of the Second Amended Final Judgment herein ("AFJ2"); and ASCAP having applied to this Court for a determination of interim and final license fees for the license sought by MobiTV; and ASCAP and MobiTV having agreed that this Court may fix interim license fees in accordance with Section IX(F) of AFJ2; it is

ORDERED:

1. ASCAP shall issue an interim blanket license to MobiTV for the MobiTV Service for periods commencing November 11, 2003. In fixing this interim fee, the Court has not taken into account the scope of the license, including but not limited to whether it is "through to the audience," or whether it covers any other parties. All parties reserve their rights with respect to those issues.

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2. a. Interim license fees for the MobiTV Service shall be as follows: \$1,375,000.00 for the period November 11, 2003 through December 31, 2008 (\$1,000,000.00 for the period November 11, 2003 through March 31, 2008, and \$125,000.00 for each calendar quarter thereafter until December 31, 2008), and \$125,000.00 per calendar quarter thereafter until otherwise ordered by the Court or agreed upon by the parties.

b. The interim license fees provided for above shall be payable as follows: MobiTV shall pay to ASCAP \$1,375,000.00 on or before March 1, 2009; payment for the first calendar quarter of 2009 shall be made to ASCAP no later than April 1, 2009; and payment for each calendar quarter thereafter shall be made no later than forty-five (45) days following the first day of the calendar quarter to which the payment applies (e.g., payment for the second calendar quarter of 2009 would be due on May 15, 2009).

3. The interim license fees provided for by this Order shall be subject to retroactive adjustment at the conclusion of this proceeding to give effect to the final license fee fixed by the Court or agreed upon by the parties for any final license issued to MobiTV, Inc., including interest as may be determined by the Court.

4. Upon ASCAP's reasonable written request, MobiTV shall provide ASCAP with music use reports regarding the musical works contained in MobiTV's audio-only and audiovisual streams in a calendar quarter (the "Music Use Reports") that contain data that are in a format sufficient for ASCAP to make distributions to its members. The Music Use Reports shall be in a format agreed upon by the parties or ordered by the Court. MobiTV shall make good faith efforts to furnish the information requested in electronic form, employing such commercially practicable technology as may be available for monitoring music on MobiTV, or such other means or methods upon which MobiTV and ASCAP agree.


5. This Order shall not be considered or construed to constitute any expression of opinion by the Court with respect to the contentions of the respective parties and shall in no way influence or affect the determination of (i) the scope, nature or extent of the licenses to be granted herein or as to what constitutes reasonable license fees, or (ii) any future interim license terms upon the termination of this Order, or (iii) any application to modify or vacate this Order under Paragraph 8.

6. In directing the aforesaid payments, the Court has not weighed the arguments and contentions of any party as to the nature or extent of the licenses to be granted herein or as to what should constitute reasonable license fees herein. This Order is without prejudice to any position that any party has taken or may seek to take in the future with respect to determination of final fees.

7. Nothing herein contained shall be construed to require ASCAP to offer licenses to any other users of music at fees equal to the payments that MobiTV has been directed to make on account of the terms of this Order.

8. At any point after MobiTV makes the initial payment of \$1,375,000.00 to ASCAP in accordance with paragraph 2(b) above, upon good cause shown, and pursuant to MobiTV's application to this Court on ten days' written notice, the Court shall modify this Order in the event the Court finds there has been a material adverse change to MobiTV's financial or business condition. If MobiTV makes such an application, ASCAP will have sufficient opportunity to object to and take discovery in connection with MobiTV's application.

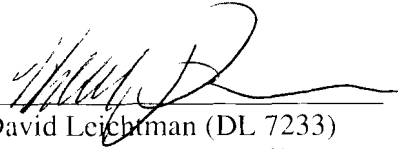
Dated: White Plains, New York
February 20, 2009


Sr. United States District Judge

We consent to the entry of the foregoing:

Dated: New York, New York
February 18, 2009

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Dated: New York, New York
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February __, 2009

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Attorneys for MobiTV, Inc.

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